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## **Immigration and Equal Ownership of the Earth**

Who owns the earth's natural resources? One very plausible answer to this question is "everyone". After all, no one is responsible for creating natural resources. We have all just happened to be born into a world in which these resources exist. In cases in which no one seems to have any stronger claim to a resource than any other, it seems intuitive that it should be shared equally. The idea of equal ownership of the earth's natural resources may be morally intuitive, but it also has radical implications. This article traces the implications of natural resource egalitarianism for one area of political policy, that of immigration. More specifically, I wish to address the question of whether a world in which natural resources are owned equally must be one in which people can move freely between states. Does natural resource egalitarianism entail open borders?

To answer that question, I will consider two different models for egalitarian ownership of the earth's resources. The first is equal division, under which each person would be granted an equal share of the value of the earth's natural resources. The second is collective ownership, under which every person would have the right to use the earth's natural resources, but not the right to exclude others from them. While these models and their associated ideas have a long history within western political thought, this article will examine them as they are presented by two sets of contemporary theorists: Hillel Steiner, who defends equal division, and Michael Blake and Mathias Risse, who defend common ownership. Both models, as their proponents make clear, have radical implications for immigration policy. On either model, states would not enjoy the wide discretion to restrict immigration that they

currently claim. However, neither Steiner nor Blake and Risse defends open borders. Both claim that immigration restrictions are permissible under certain conditions.

This article will examine each model in turn and, in each case, do three things. First, it will set out the model in question, along with its implications for immigration policy. Second, it will defend each model against objections from those defending immigration restrictions. Third, it will contend that the models do not go far enough in their opposition to immigration restrictions. More specifically, the article argues that both the equal division and the common ownership models, as presented by their proponents, fail to respect the claims of people whose interest in the land is not primarily economic. If the land belongs to everyone equally, then people should not be prevented from accessing it in order to pursue migratory goals such as family reunification, career development and education. The article concludes with a proposal for combining equal division with common ownership. Under this combined model, people would be free to migrate as they please.

## **1. Equal Division**

Hillel Steiner's theory of territory and resource ownership has three core elements. The first comes from Locke: the idea of territory as consensually conjoined property. For Locke, not only is consent the only principle by which a state can acquire its citizens, it also the principle by which a legitimate state acquires its territory. When people consent to a state, they thereby consent to join their lands to it, thus forming the state's territory. A state's territory is, for Locke, nothing other than the conjoined land of individual property owners.<sup>1</sup> Steiner takes this same central

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<sup>1</sup> Or at least this is the best interpretation that commentators have been able to make of what little Locke says regarding territory. See Hillel Steiner, "Libertarianism and the Transnational Migration of People," in *Free movement: Ethical Issues in the Transnational Migration of People and of Money*, ed. Brian Barry and Robert E. Goodin, (University Park, PA: Pennsylvania State University Press, 1992),

idea and develops it into his own theory of territory, which, in at least one respect, is more radical than Locke's. While Locke argued that land became state territory via individual consent, he denied that individual property owners could remove their property from state territory once it had been joined.<sup>2</sup> Steiner believes this denial of exit betrays the ideals underlying Locke's theory. Unless there is some provision in the original territorial agreement denying dismemberment, Steiner thinks it illegitimate for a state to refuse to relinquish privately owned land. What is freely joined, in Steiner's eyes, is capable of being freely disjoined. In this way, Steiner's theory opens up the radical possibility of individual secession.<sup>3</sup>

The second element of Steiner's theory is its egalitarianism. According to Steiner, no one can possess land without compensating the rest of humanity for it. The amount they must compensate them by is nothing less than an equal share of the value of the land in question. This, he tells us, is how he, following Henry George, interprets the Lockean principle that natural resources fundamentally belong to the all persons equally. The compensation payments, he argues, should be paid in the form of a global land tax, which when collected will create a global fund that, in turn, is to be distributed to all in the form of something like an unconditional basic income. Since states claim jurisdiction over their territory and since their territory consists of the conjoined lands of their members, it falls on states to collect this tax. "To put it in a nutshell," Steiner writes, "liberal principles demand that *states pay rates*".<sup>4</sup>

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pp. 92-93; A. John Simmons, "On the Territorial Rights of States," *Philosophical Issues* 11 (2001): 300-326 esp. pp.312-313; George Gale, "John Locke and Territoriality: An Unnoticed Aspect of the Second Treatise," *Political Theory* 1 (1973): 472-485, at p. 480. As George Gale notes, while territory seems to be immensely significant to Locke's consent theory of political obligation, it is a concept that "is never addressed directly" in Locke's work (ibid., p. 472). The most important passages on territory can be found at sections 116-117 and 120 of the Second Treatise: John Locke, *Two Treatises of Civil Government*, (London: Dent, 1924).

<sup>2</sup> Locke, *Two Treatises*, II, sect. 120.

<sup>3</sup> Steiner, "Libertarianism," pp. 92-93; ibid.

<sup>4</sup> Hillel Steiner, "Liberalism and Nationalism," *Analyse und Kritik* 17 (1995): 12-20 p.19. Emphasis in the original.

The third element of Steiner's theory is its libertarianism. Steiner's individual landowners hold strong property rights. They can invoke their property rights to do anything they like with their property as long as it does not violate the rights of others. Importantly, individuals can sell, lease, give or lend their property to anyone else, including foreigners, if they so wish. They can also invite others, including foreigners, onto their property. Restrictions on the use that individuals wish to make of their property constitute unjust interventions in private affairs.

Now, one thing worth pointing out at the outset is that there seems to be a tension between the first and the third elements of Steiner's theory. If, as Steiner holds, a state's territory is the consensually conjoined property of individual landowners, then why should states not place whatever restrictions they wish on the property rights of landowners? If a landowner objected to the restrictions, she is free to remove herself and her property from the state. By remaining within the state, she signals her consent to the restrictions in place. Indeed, any demand on Steiner's part that consensually formed states should be libertarian in character would seem to violate the most basic libertarian principle: that people should be able to make whatever agreements in regards to their property.

Steiner does not seem to notice this tension between these two elements of his theory or at least he says nothing regarding it. There is however a simple enough way to resolve the tension, which is to distinguish between two different contexts to which his principles could be applied. We can distinguish between what would be, for Steiner, an ideal world in which landholders possess unimpaired titles to the lands they hold and are permitted to secede if they so wish and a less than ideal world in which landholders possess unimpaired titles but are not permitted to secede. In Steiner's ideal world, states would be consensually formed and, as such, would be

permitted to assume a non-libertarian character. It is in a less than ideal world, in which states are not consensually formed, that it makes sense to insist that the state assume a libertarian character. Individual landowners must be awarded the right to secede or they must be awarded the full package of libertarian property rights within existing states. States could only possess the rights of private associations to adopt any constitution they so wish, if they behaved like private associations in granting their members the right of exit.

We can distinguish then between Steiner's ideal and less than ideal worlds. To these we should add a third kind of world: a non-ideal world in which landholders possess no title to the lands they hold. This, in Steiner's view, is the real world. Landholders are not paying a global resource tax, so they cannot assert any kind of property rights to the land they happen to occupy.

What implication does this all have for immigration policy? Current immigration restrictions are called into question on a number of counts. Consider first our real, non-ideal world. If land titles are impaired, then individuals have no right to exclude others from the land they possess. Since state territory is, on Steiner's account, nothing but the conjoined lands of individual property owners, if individual land titles are impaired then state territorial claims are equally impaired and states have no right to exclude foreigners from their territory. In the real, non-ideal world, all immigration restrictions are unjust.<sup>5</sup>

In the less than ideal world, described above, landholders possess unimpaired titles and since they are not permitted to secede from the states to which they belong, they must be granted strong property rights to their land. These property rights would include the right to sell, lease, give or lend their land to foreigners (who would then

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<sup>5</sup> Steiner, "Libertarianism," p. 90.

have a property right to reside there) or to keep hold of their land but invite foreigners reside with them. Immigration restrictions that prevented people from doing these things would violate property rights.<sup>6</sup> The only way the exclusion of foreigners could be justified therefore, in this less than ideal world, would be if *every* landowner in the state chose to exclude foreigners from their property. Under such a circumstance, immigration would be a form of trespassing.<sup>7</sup> Clearly such unanimity amongst landowners is extremely unlikely given the size and diversity of modern states. In this less than ideal world, immigration restrictions would, on most occasions, be unjust.

It is only in what we have been imagining must be Steiner's ideal world that immigration restrictions would necessarily be justified. In this ideal world, states would constitute free associations of landowners, all of whom have a right to secede. Under such circumstances, states could choose any immigration policy they so wished. If they wished to restrict immigration, they could do so. However, if a state restricted immigration and a landowner dissented from this policy, that dissenting landowner would be entitled to secede. Having established her own state, the dissenting landowner would be free to implement her own immigration policy to her own state.

In short, Steiner's theory of territory and resource ownership offers not only a radical critique of current immigration restrictions, but also an indication as to the conditions under which immigration restrictions could yet be justified. For Steiner there are two necessary conditions for justified immigration restrictions: (1) the people that occupy the territory must have gained rightful title to it by compensating the rest of humanity for it and (2) these landowners must have each consented to the

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<sup>6</sup> Ibid., pp. 91-92.

<sup>7</sup> Ibid., p. 91.

exclusion of foreigners. If landowners are denied the right to individually secede, they must issue explicit consent to the exclusion of foreigners. If landowners are granted the right to individually secede, they can signal tacit consent to the exclusion of foreigners by remaining within the exclusionary state. At present, the first condition is not fulfilled, thus all immigration restrictions are unjust. In a better world, both conditions would be fulfilled, leaving immigration policy in the hands of landowners.

## **2. Equal Division Assessed**

Before presenting my own critique of Steiner's theory, let me first defend it against two lines of criticism directed at it by those defending immigration restrictions. The first is an argument made by Christopher Wellman. Wellman concedes that "there is a conflict between a state's sovereignty over its territory and an individual property owner's dominion over her land", but he argues that we should resolve such a conflict in favour the latter. He explains:

I am a staunch defender of individual self-determination, but the crucial point here is that one cannot consistently insist that property rights are totally unlimited without committing oneself to anarchism. This is because political states are functionally incompatible with extending unlimited dominion to their constituents. States must be sufficiently territorially contiguous in order to perform their requisite functions, and achieving contiguity requires them to nonconsensually coerce all those within their territorial borders.<sup>8</sup>

Wellman's objection here is targeted against the idea that individual landowners have a right to secede. A right of this sort could lead to states that are radically non-contiguous: states riddled with microstates much like Swiss cheese riddled with holes. Radically non-contiguous states, Wellman argues, would

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<sup>8</sup> Christopher H. Wellman, "Immigration and Freedom of Association," *Ethics* 119 (2008): 109-141, at p. 131.



undermine security for everyone since they are likely to become a haven for, and target of, thieves. Only larger states, Wellman claims, can effectively deal with criminality.<sup>9</sup>

Let us suppose that these security concerns do offer a compelling case against the idea that individual landowners have a right to secede. Wellman suggests that a rejection of this right lends reason to reject Steiner's critique of current immigration restrictions. But is this so? From what has already been said regarding Steiner's theory, we can see that it is not. Steiner's support for the idea that individual landowners have a right to secede can be distinguished from his support for a set of property rights that includes the rights to sell, lease, give or lend land to foreigners and to invite foreigners onto one's property. Steiner could concede his support for the former right without conceding his support for the latter rights and it is the latter set of rights, not the former right, that are incompatible with immigration restrictions. Indeed, Wellman's argument actually bolsters the libertarian case against immigration restrictions. For if Wellman is right, Steiner must abandon his vision of ideal world composed of consensually formed states, for the sake of security. But it is precisely in this ideal world that states would be permitted to determine their own immigration policy. If Steiner must abandon this ideal world, what we are left with is Steiner's less than ideal world: a world of non-consensual states that can only impose immigration restrictions if they receive unanimous support from all citizens.

In the end, even Wellman does not appear entirely convinced by his own objection to Steiner, for he concedes that it might be possible to "eschew anarchism and still suggest that individual property rights take precedence over a state's right to

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<sup>9</sup> Christopher H. Wellman, "A Defense of Secession and Political Self-Determination," *Philosophy & Public Affairs* 24 (1995): 142-171 p156, pp160-161.

control its borders”.<sup>10</sup> In response, Wellman falls back on what is his core argument for immigration restrictions, which is that restrictions are justified as an expression of freedom of association. That argument rests upon an analogy between states and private associations, such as clubs and marriages. Wellman notes that these private associations are free to exclude applicants for membership. Since states are a form of association, they should be awarded the same right. If one thinks of immigration restrictions as an expression of freedom of association then one might conclude, with Wellman, that the rights of individual landowners should be relegated to those of the state.

While it would take us too far off topic to offer a full response to Wellman’s freedom of association argument here, the comparison with Steiner helps to bring out two of its central failings. First, as Wellman himself makes clear in the passage quoted, states are non-consensual. Moreover, states are a type of association that significantly restrict their member’s ability to associate with any excluded non-members; immigration restrictions prevent face-to-face association between citizens and foreigners. These points together represent a significant distinction between states and private associations. Few private associations prevent face-to-face to association between members and non-members. Those that do – marriages in which wives are locked away indoors or insular religious groups that prohibit all contact with ‘godless’ outsiders – would only ever be regarded as tolerable by liberals on condition that their membership was genuinely voluntary. If they are involuntary, they are rightly regarded as the violation, not the expression, of freedom of association.

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<sup>10</sup> Wellman, “Immigration and Freedom of Association”, at p. 132.

There is a real irony here. Wellman sets out to defend immigration restrictions via an analogy with clubs and marriages. Yet immigration restrictions violate the freedom of clubs and marriage partners to associate as they please, since they prevent fact-to-face association between foreigners and citizens. If one thinks it so important for people to be able to associate freely by, say, marrying the people they wish to marry or determining for themselves the membership of their clubs, then one should not, at the same time, support immigration restrictions in a world of non-consensual states, since immigration restrictions prevent people from associating with foreigners in these various ways.

How can states be rendered compatible with freedom of association? One way would be to follow Steiner's suggestion of granting individuals a right to secede. In that case, states would become like voluntary clubs and marriages, expressing a wish by members to associate with others. Those that wish to associate with excluded foreigners can secede in order to do so. But if Wellman is right, individuals must be denied the right to secede. States are, and must remain, non-consensual associations. But as long as states are non-consensual, they cannot prevent foreigners from entering without at the same time denying people the ability to associate as they please. The only solution then seems to be that states must be open associations. Immigration restrictions must be abolished.

Second, states are territorial. When they exclude people from territory, they do more than exclude them from a form of association, they exclude people from an area of the earth's surface. To justify the exclusion of foreigners from a state's territory then, one must be able to justify their exclusion from that area of the earth's surface, which is to say that a justification for immigration restrictions requires a theory of natural resource ownership. Steiner offers such a theory. Wellman does

not. Nor does Wellman provide any reason to reject Steiner's theory of natural resource ownership, except to deny that individual landowners have a right to secede. Without a reason to reject Steiner's theory, we are left with is the possibility that states have no rights to land distinct from the rights that individual landowners possess. If only individuals own the land, then the fact that states may wish to act like private associations and exclude foreigners from their membership is really neither here nor there. Just as clubs and marriages have no rights to exclude people from other people's property, so states have no right to exclude people from land it does not possess.

Wellman's objections to Steiner fail. Let us consider another objection. David Miller objects to Steiner's claim that, in a world of unimpaired titles, landowners have complete discretion to invite whoever they want to onto their land. Miller asks how a person who is outside of the land he has been sold, leased, given, lent or invited onto can get to that land when between him and it lays land that belongs to someone else:

Does he arrive by parachute and if so through whose airspace? Or if he arrives by more conventional means, for instance by using public roads, how does he obtain permission for his travels?<sup>11</sup>

Let us call this problem the Free Passage Problem. Miller's answer to the Free Passage Problem is to uphold the traditional assumption that states are entitled to admit or exclude foreigners as they wish. When states do so, they cannot be accused of violating individual property rights since the migrants that have been sold, leased, given, lent or invited onto privately owned land must pass through land that, Miller assumes, rightfully belongs to the state. When states impose immigration restrictions,

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<sup>11</sup> David Miller, *National Responsibility and Global Justice*, (Oxford: Oxford University Press, 2007), p. 212.

then, they do not violate the ownership rights of individual landowners but rather uphold their own ownership rights over public land.

Since Miller premises his argument on the assumption that states own public land, one might think that the Free Passage Problem disappears if we assume, with Steiner, that a just world would be one in which all land has been privatised. But this is not the case. Every traveller must negotiate his way to his destination one way or another. If it is not through publicly owned land, it must be through privately owned land. Either way, a theory, such as Steiner's, which places so much weight on the rights of landowners to transfer their land to others or invite others onto their land, must face up to the problem that these rights seem to be gravely restricted by the rights of intervening landowners to exclude whoever they wish from their property.

The Free Passage Problem is a genuine problem, but I do not think Miller is correct to think that the only solution to it is to accept the permissibility of immigration restrictions. There are various other solutions to the problem. One solution, which I shall return to below, is to designate land connecting private property, common land, thus allowing all humanity to make use of it. This would mean departing somewhat from Steiner, in that not all land would be privatised, but it would not mean permitting states to exclude immigrants. Another solution, that would involve an even smaller departure from Steiner, would be to grant individuals a right of way over any land, public or private, that they need to traverse in order to reach the private land they are entitled to reside upon. Rights of way are already common in property law as a means of addressing precisely the sort of problem the Free Passage Problem represents. Either of these solutions would offer a means of addressing the Free Passage Problem while maintaining ideas at the core of Steiner's theory of natural resource ownership: the idea that people can gain title to natural

resources via compensation and that those that own natural resources should have broad discretion to do with them as they wish.

Steiner's theory thus survives these various objections from theorists defending immigration restrictions. There is however a more telling objection to Steiner, one that criticises Steiner not for his opposition to immigration restrictions but for his willingness to permit them under certain conditions. Consider Steiner's account of original appropriation. This account is egalitarian in so far as it offers everyone an equal share of the *value* of natural resources, but is not egalitarian to the extent of demanding that the natural resources themselves be shared. If A appropriates an area of land L that B also wants, then all A need give B is an equal share of the value of L. Having compensated B for L, A is free to exclude B entirely from L. The problem with this is that B may have good reason to want to access L that has nothing to do with accessing the economic value of L.

Consider, for instance, a would-be immigrant who wishes to reside upon a tract of land within a foreign country in order to pursue her career, be close to family, attend a religious institution, or study at a university there. Such an opportunity, the would-be immigrant believes, will greatly enhance the quality of her life. She is not interested in any cash alternative. Now suppose that no one within that country is prepared to offer her accommodation: most are hostile to immigrants and those that are not (the employer, family, co-religionists or university that would welcome her) lack the space to house her. This is the kind of occasion in which Steiner would be prepared to support what are, in effect, immigration restrictions. The person will be excluded from the country because she is unable to reside there. Given that the world belongs to everyone, this seems entirely unfair. Why should the would-be immigrant have to settle for a cash alternative she is not interested in, rather than the chance to

pursue the opportunities she is interested in? Why should others be able to close off those opportunities by appropriating areas of the earth's surface without her consent?

Let us call this problem the Inequitable Exclusion Problem. The problem is essentially that economic compensation cannot always justify appropriation. That is a truth that poses a challenge to Steiner and yet, interestingly, is also a truth that is implicit within Steiner's theory. For Steiner holds that once an area of land has been justly acquired, it belongs to its owner and cannot be taken from them without their consent. Were the provision of economic compensation always sufficient to justify appropriation, land could be appropriated from its owners without their consent. Steiner clearly wishes to distinguish between original appropriation, for which compensation is sufficient for justification, and subsequent appropriation, for which consent is required. But what justifies this distinction? If monetary compensation can justify original appropriation, why not subsequent appropriations? Steiner offers no answer to this and it is unclear what answer could be given.

It seems then that Steiner's argument that land can be appropriated as long as others are awarded an equal share of its value is at odds with its underlying egalitarian motivation. Yet if individuals cannot appropriate land in the way Steiner suggests, then it becomes doubtful that states can exclude foreigners from their territory even when Steiner's two conditions are met: the people that occupy the land have gained rightful title to it and have consented to the exclusionary policy.

### **3. Common Ownership**

If egalitarians reject Steiner's theory for the reasons that I have mentioned, then perhaps they should consider a second theory of territorial rights, one put

forward by Michael Blake and Mathias Risse.<sup>12</sup> According to Blake and Risse, the correct egalitarian theory of territorial rights is one that regards the world as commonly owned. This idea of common ownership is to be contrasted with equal division. While equal division assigns land to individuals and allows those individuals to exclude everyone else from their land, common ownership grants each co-owner “a right to use something without the right to exclude other co-owners”.<sup>13</sup>

Blake and Risse offer the following example:

If the Boston Common were held as *common ownership* when it was used for cattle, all individuals would have the right to decide how they would make use of the grazing land. Each individual would have the right to feed their cattle on the Boston Common according to his or her own tastes.<sup>14</sup>

Given this definition of common ownership, the natural implication of the view would seem to be that immigration restrictions are unjust. According to Blake and Risse, everyone is a co-owner of the world. This would seem to imply that everyone has a right to make use of the world without the right to exclude others from it. Immigration restrictions are a form of exclusion. They prevent people from making use of large sections of the earth’s surface. A just world would, then, be a world without immigration restrictions. It would be a world much like the Boston Common: open to all to enjoy as they please.

And yet this is not the conclusion that Blake and Risse draw from their model. Rather they argue that foreigners have a right to enter a state only if the natural resources within it are “underused”. By “underused” Blake and Risse mean that the

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<sup>12</sup> I shall attribute the theory to Blake and Risse, since it was first developed in a set of co-authored articles: Michael Blake and Mathias Risse, “Immigration and Original Ownership of the Earth,” *Notre Dame Journal Legal Ethics & Public Policy* 23 (2009): 133; Michael Blake and Mathias Risse, “Migration, Territoriality and Culture,” in *New Waves in Applied Ethics*, ed. Thomas S Peterson and Clark Wolf, (Basingstoke: Palgrave Macmillan, 2007). The theory has however since been developed by Risse in single authored work. The most extended exposition of the model can be found in Mathias Risse, *On Global Justice*, (Princeton, NJ: Princeton University Press, 2012). For debate regarding this approach see Ryan Pevnick, et al., “An Exchange: The Morality of Immigration,” *Ethics and International Affairs* 22 (2008): 241-249.

<sup>13</sup> Blake and Risse, “Immigration”, at p. 140.

<sup>14</sup> *Ibid.*, p. 140.



ratio of a state's population to the value of its natural resources is low compared to other states. (Blake and Risse are uncertain how to value natural resources although they support the use of market prices to value those natural resources currently on the market).<sup>15</sup> Thus to take an extreme example, if there were just two people occupying the entire territory of the United States but every other state had the population it has today, then Blake and Risse would deem these two Americans to be underusing their resources and would thus regard any immigration restrictions the two sought to put in place as a violation of common ownership.<sup>16</sup> If on the other hand the state is "overusing" its natural resources – the per-capita-value of its natural resources is above the average – then it is free to exclude.

Could a state that is underusing its resources not simply compensate those it excludes? Blake and Risse consider this proposal. They argue that an underusing state is entitled to offer compensation and foreigners are entitled to accept, it but if the foreigners refuse to accept the compensation then the state cannot exclude its borders. It is this opposition to compensated exclusion that does most to distinguish the common ownership model, advanced by Blake and Risse, from equal division model, advanced by Steiner.<sup>17</sup>

In a moment, I shall criticise Blake and Risse for being too permissive of immigration restrictions, but first let me defend them against the charge that they are not permissive enough. In responses to the common ownership model, Ryan Pevnick and Philip Cafaro have both present an objection that in its elements amounts to two points.<sup>18</sup> First, most immigrants do not migrate in search of natural resources but rather to access certain social goods such as jobs, security and welfare benefits.

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<sup>15</sup> Blake and Risse, "Migration, Territoriality and Culture," pp. 163-164.

<sup>16</sup> Mathias Risse, "On the Morality of Immigration," *Ethics & International Affairs* 22 (2008): 25-33, at p. 25.

<sup>17</sup> Blake and Risse, "Migration, Territoriality and Culture," p. 165.

<sup>18</sup> Pevnick, et al., "An Exchange".

Second, these social goods are not natural but the achievements of the members of the host state and thus, it is claimed, those members can exclude foreigners from these social goods if they so wish. As Cafaro puts it:

In the twenty-first century, people from Mexico and Pakistan are not coming to America to take up quarter sections of farmland under the Homestead Act. They are looking for better-paying jobs provided by the American economy and fleeing countries where jobs are scarce or poorly paid. Such high-paying jobs are clearly a “man-made” resource. So are the rights and freedoms that many immigrants also seek. These good things are indeed the “accomplishments” of particular societies with particular laws, traditions, policies and activities.<sup>19</sup>

Neither point in my view tells against the Blake and Risse approach. The problem with the first point is that it implies immigrants cannot be entitled to natural resources if they do not seek natural resources. But there is no reason to think this the case. Clearly it is possible for people to be entitled to X even if what they want from X is actually Y.<sup>20</sup> The problem with the second point is that while social goods may be the achievement of the members of a state, those social goods must exist upon a natural resource for which these members can claim no credit: land. If the world’s land is commonly owned, something that for all their objections Pevnick and Cafaro never actually deny<sup>21</sup>, then states could not exclude foreigners from their territory even if they would otherwise be entitled to exclude them from their social goods.

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<sup>19</sup> Ibid., p. 249.

<sup>20</sup> Mathias Risse himself points this out in his reply in “An Exchange”, p254.

<sup>21</sup> Pevnick goes as far as to countenance the view that *he claims* is Risse’s, that the earth is “*collectively* owned by humanity” (p245, emphasis added). Pevnick argues that even if one adopts this view one need not oppose immigration restrictions since there are other ways to recognise the collective ownership of the earth than by admitting foreigners, for instance by collecting a resource tax of the sort Steiner endorses. The problem with Pevnick’s argument here is that it misconstrues the Risse-Blake view, that Risse had put forward. Risse does not believe merely that the world is collectively owned by all humanity but that it is owned by all humanity in a particular way: it is subject to common ownership. Since it is subject to common ownership exclusion cannot be compensated for with cash. On this see Risse’s response in “An Exchange”, p258.

To illustrate both these points consider the following example. Suppose it is hot summer's day and I stroll down to the (modern day, cow-free) Boston Common, rig up some tarpaulin for shade and start strumming my way through The White Album on my mandolin. You, a Beatles fan and shade seeker, come over to the area in which I am sitting to enjoy the music and the shade. It does not seem that, under these circumstances, I have any right to exclude you from "my" corner of the Common. It is true that you have come to enjoy the product of my labour but, since I am providing the goods you seek on common land, I can have no complaint that your presence violates my rights. Exactly the same goes for states.

Like Steiner's model then, Blake and Risse's model survives criticism from defenders of immigration restrictions. The real problem with the model is not its hostility to immigration restrictions, but its acceptance of restrictions imposed by states that are relatively overusing the natural resources in their territory. Such acceptance runs counter to the idea of common ownership as involving "a right to use something that does not come with the right to exclude other co-owners from also using it". The vision of a world in which overusing states are permitted to impose immigration restrictions, departs significantly from the analogy with the Boston Common. No Bostonian ever had a right to fence off an area of the common even if that area had a higher number of cows than other areas did.

What could justify Blake and Risse's departure from the common ownership model as they originally define it? That departure would only seem justified were it found that people have no legitimate interest in natural resources besides an interest in their economic value. If the only good reason a would-be migrant could ever have to migrate were the prospect of living in a country with a lower population to value of resources ratio, then restrictions would seem permissible whenever this was not the

case. As we have already noted, however, people have good reason to migrate that has nothing to do with the economic value of natural resources. People may wish to migrate, for instance, to pursue their career, be close to family, attend a religious institution or study at a university. If the earth is owned in common, why should we accept the legitimacy of immigration restrictions that prevent people from pursuing these goals, merely because the country excluding them is overusing its resources?

Indeed, there seems to be something like an internal contradiction within the theory presented by Blake and Risse. On the one hand, they distinguish their common ownership model from the equal division model advanced by Steiner by opposing the compensated exclusion of migrants. That position seems to be well motivated by the thought that the value of natural resources cannot be reduced to their economic value. Yet on the other hand, Blake and Risse are willing to permit the exclusion of migrants on condition that the excluding states are not underusing their resources, as if the only value people could find in natural resources is to their per capita economic value. This seems like a contradiction. For what is the principled difference between excluding people from land while compensating them for the value of the resources that have been appropriated and excluding people from land while ensuring that they have resources of the same value to appropriate. In both cases, one is unilaterally excluding people from land that, *ex hypothesi*, they are equally entitled to. And in both cases, one is treating those one excludes as if the only legitimate interest they have in the land is an economic one.

In fact, if anything, Blake and Risse are more miserly towards excluded would-be migrants than Steiner. Steiner would ensure that all those who are excluded are personally compensated. Blake and Risse would only ensure that the excluded have live in a country that has the same per capita natural resource wealth as the

countries that exclude them. Whether or not this is of any benefit at all to the excluded would-be migrants depends entirely on how their countries use the natural resources within their territory. If the would-be migrants are unfortunate enough to live in a corrupt or inequitable society in which natural resource wealth is appropriated by the elite, Blake and Risse's proposals could leave them empty handed.

#### **4. Towards a Combined Model**

We have noted the advantages of the common ownership model, while critiquing the Blake and Risse interpretation of it. If we revert to this more straightforward interpretation of common ownership, as it is encapsulated in the Boston Common example, then we are led to support a world of open borders. Everyone can use the world as they wish. No one can be excluded from any part of it. There remains a problem, however, which is that this more straightforward interpretation of the common ownership model does not permit private property. This is a problem since private property arguably has important advantages in terms of enhancing individual autonomy and economic efficiency. Without private property, people cannot make significant alterations to the land. This not only limits people's autonomy, it also prevents people from improving the land in ways that could benefit wide society.

If some land should be privately owned, how should that land be distributed? Given our egalitarian starting point, a plausible solution is to permit people to claim land, on condition that the value of the land is distributed equally to all persons. In other words, we could implement Steiner's equal division model in relation to that subset of land we permit to be privately owned. The overall model then would be a

combination of equal division and common ownership. Privately owned land, distributed on the basis of equal division, would constitute discrete islands within the broad sea of commonly owned. This combined model would not only permit some private property, it would also solve the two problems raised in relation to equal division: the Free Passage Problem and the Inequitable Exclusion Problem. Travellers would be able to traverse across commonly owned land to reach the private owned land they had been sold, leased, given, lent or invited onto; thus solving the Free Passage Problem. Migrants would be able to use common land as a place to reside, so as to avoid being unjustly excluded from the opportunities (career, university, relationships etc.) they wish to pursue; thus solving the Inequitable Exclusion Problem.

This combined model is in fact not entirely different to the system of land ownership currently in operation in most liberal democracies. Much of the land is privately owned, but a significant proportion is publicly owned. The state owns the roads, parks and squares that connect portions of private owned land. The state also owns a variety of shelters and social housing schemes that offer people who would otherwise be homeless a place to stay. This combination of public and private ownership is a way by which liberal democracies have gone some (admittedly limited) way towards addressing the Free Passage Problem and the Inequitably Exclusion Problem. One of the main differences, however, between the combined model of ownership currently in operation and the egalitarian combined model of ownership envisaged here, is that under the egalitarian combined model, public land would not be state owned but rather held in common by all humanity. The effect of this would be that while currently states are free to exclude foreigners from public

land by excluding them from their territory, under an egalitarian combined model of ownership, public land would be commonly owned and thus open to all humanity.

## **5. Conclusion**

So would a world in which natural resources are equally owned be a world of open borders? It seems so. This article has considered two different models of natural resource egalitarianism: equal division and common ownership. It found that while both models, as presented by their proponents, have radical implications for immigration, they also permit states to impose immigration restrictions under certain conditions. Steiner's equal division model permits states to impose immigration restrictions whenever (1) the people that occupy the land have gained rightful title to it by compensating the rest of humanity for it and (2) these landowners have consented to the exclusion of foreigners. Blake and Risse common ownership model permits states to impose immigration restrictions whenever they have a higher than average population to value of resources ratio. Both models, then, would permit the exclusion of would-be immigrants whose interest in migrating had nothing to do with the economic value of natural resources in the state they are seeking to enter. From a resource egalitarian perspective, this seems unjust. If the world belongs to everyone, why should some people be forced to surrender their plans for family reunification, career development, study etc. because some other people have appropriated land that, *ex hypothesi*, no one had stronger claim to than anyone else? The proposal the article has arrived at is one in which privately owned land is surrounded by commonly owned land and the common land remains open to all. A world that adopted this model would not a world without any private property, but equally it would not be a world in which vast tracts of land – the territory of states – could be

set aside for the exclusive use of a sub-set of humanity. A world in which natural resources are equally owned would be a world in which people can migrate freely.

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